

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS,

Petitioner,

vs.

LELAND KOLKMEYER,

Respondent.

No. 14-1160 EM

DECISION

Leland Kolkmeier is subject to discipline because he committed mail fraud.

Procedure

On July 10, 2014, the State Board of Embalmers and Funeral Directors (the Board) filed a complaint seeking to discipline Kolkmeier. He was served with the complaint and our notice of complaint/notice of hearing by certified mail¹ and filed an answer on August 7, 2014.

On October 2, 2014, the Board filed a motion for summary decision. We gave Kolkmeier until October 20, 2014, to respond, but he did not respond.

We may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts.² Parties may establish a

¹ The return receipt in our file does not contain the date of delivery; however, the receipt was signed by Kolkmeier and filed with us on July 24, 2014.

² 1 CSR 15-3.446(6)(A). All references to CSR are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

fact, or raise a dispute as to such facts, by admissible evidence.³ Kolkmeier did not respond to the motion for summary decision and therefore did not raise any issue with the facts as alleged by the Board and supported by the exemplified records of the United States District Court, Western District of Missouri, or contained in the affidavit of the Board's Executive Director.⁴

Accordingly, the following findings of fact are undisputed.

Findings of Fact

1. Kolkmeier obtained a funeral director license in 1984. This license was current and active at all times relevant to these findings, except when it lapsed for failure to renew from May 31, 2014 to July 15, 2014.

2. Kolkmeier obtained an embalmer's license in 1994. The license was current and active at all times relevant to these findings, except when it lapsed for failure to renew from May 31, 2014 to July 24, 2014.

3. Kolkmeier obtained a preneed agent license in 2010. The license was current and active at all times relevant to these findings.

4. From August 1998 through February 2013, Kolkmeier served as Treasurer for the Wellington Napoleon, Missouri, Fire Protection District and served as Treasurer for the Wellington Napoleon, Missouri, Special Road District. During this time, he converted funds from both of these districts to his personal use. He did this by making false and fraudulent pretenses, representations and promises to the districts. Kolkmeier then wrote checks on the accounts of each of the districts to himself and to others for his own benefit.

5. Kolkmeier converted a total of \$590,674.37 from the Wellington Napoleon Fire Protection District to his own use.

³ 1 CSR 15-3.446(6)(B).

⁴ *Id.*

6. Kolkmeier converted a total of \$939,458.53 from the Wellington Napoleon Special Road District to his own use.

7. In furtherance of these schemes, Kolkmeier mailed checks drawn on the accounts of each of these districts to the Citi Card Processing Center in Des Moines, Iowa, to pay his own bills.

8. On November 20, 2013, Kolkmeier pled guilty to two counts of the crime of mail fraud in violation of 18 U.S.C. § 1341 in the United States District Court for the Western District of Missouri. These guilty pleas were based on the aforementioned conduct.

9. On June 23, 2014, Kolkmeier was sentenced to incarceration for 36 months in the custody of the United States Bureau of Prisons on each count, to be served concurrently, followed by a period of supervised release for three years.

10. On June 24, 2014, a judgment of restitution was entered against Kolkmeier in the amount of \$1,530,159.90 in the same cause.

Conclusions of Law

We have jurisdiction to hear the Board's complaint.⁵ The Board has the burden of proving by a preponderance of the evidence that Kolkmeier has committed an act for which the law allows discipline.⁶

The Board alleges there is cause for discipline pursuant to § 333.330:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or who has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

⁵Sections 621.045 and 333.330.2. Statutory references are to RSMo Supp. 2013 unless otherwise indicated.

⁶ See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence).

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty, or an act of violence[.]

Kolkmeyer pled guilty to two counts of the federal crime of mail fraud, as defined in 18 U.S.C.

§ 1341, which provides:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

The Board argues Kolkmeyer is subject to discipline under § 333.330.2(2) because mail fraud is an offense that contains an essential element of fraud or dishonesty and is reasonably related to the qualifications, functions or duties of funeral directors, preneed agent funeral directors, and embalmers.

An essential element is one that must be proven for a conviction in every case.⁷

According the Eighth Circuit model jury instruction for mail fraud under 18 U.S.C. § 1341, the essential elements of the crime are (1) the voluntary and intentional participation in a scheme to obtain money by means of material false representations or promises; (2) with the intent to defraud; and (3) use of the mail in furtherance of an essential step in the scheme.⁸ Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.⁹ It necessarily includes dishonesty, which is a disposition to defraud, deceive or betray.¹⁰ Mail fraud contains the essential element of intent to defraud. The intent to defraud is contained within the definitions of fraud and dishonesty. Consequently, mail fraud contains an essential element of both fraud and dishonesty. Accordingly, there is cause to discipline Kolkmeier's licenses for committing crimes that contain the essential elements of fraud and dishonesty.

The Board asserts that mail fraud is reasonably related to the qualifications, functions or duties of funeral directors, preneed agent funeral directors, and embalmers. Reasonable relation is a low threshold. To relate is to have a logical connection.¹¹ We find that the crimes to which Kolkmeier pled guilty are reasonably related to the qualifications, functions, and duties of funeral directors and preneed agent funeral directors because a licensee inclined to commit such crimes could easily defraud clients of money and property by means of false promises and other dishonest dealings. Kolkmeier's licenses are subject to discipline for committing crimes reasonably related to the professions for which he is licensed and the Board seeks discipline.

Kolkmeier is subject to discipline under § 333.330.2(2).

⁷*State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

⁸ http://www.juryinstructions.ca8.uscourts.gov/criminal_instructions.htm

⁹ *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

¹⁰ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 650 (unabr. 1986).

Summary

There is cause to discipline Kolkmeier's licenses under § 333.330.2(2). We cancel the hearing.

SO ORDERED on December 22, 2014.

\\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹¹MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11th ed. 2004).